1922

Department of LR

OFFICE _____

STATION _____

Mis No. 39

Dated 11-1-22

A 11/21

To whom sent	Date	In:
	Given for copying	
	Copied	
	Examined	
	Signed	
	Given for despatch	
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(SUBJECT.)

Suits (S. Kanara) Mangalore Principal Dt. Munsif - Os. no 480/21
Kodialbail - Encroachment - Road Pramboke -
Compromise directed

* Not to be filled in the case of permanent records.

R.P. on No./150-21-W3. South Kanara Collectorate Office
Chermadi (camp) 22nd Decr. 1921.

All

From

H. H. Ellis, Esquire, I.C.S.,
Collector of South Kanara.

The Secretary to the Board of Revenue,
Land Revenue, Madras.

Sir,

Suit-480/21-Mangalore Principal Munsiff's Court

One Miss Mary Matilda Coelho lunatic by her guardian Mr. L.J. Fernandes, Bar-at-Law has filed the above suit--- against Government for a declaration that the plots B&C on the plaint sketch belong to her in her own right and that the encroachment proceedings instituted by Government in respect of them are ultravires and illegal and are not --- valid and binding against her &c. etc. The plots referred to are encroachments consisting of portions of a shop and roof made on the poramboke road S.No.1/1 of Kodialbail --- village.

plaint para (IV) p5cf.

2. On 15-6-20 the Chairman of the Mangalore Municipality asked the Tahsildar to have these encroachments removed as they were objectionable. The Tahsildar also inspected them on 24-6-20 and finding the objectionable issued a notice under sec.7 of the L.I.Act. Thereupon the Plaintiff put in a petition to the Tahsildar on 2-11-20 stating that the plots dealt with as encroachments were part and parcel of waraland and the constructions thereon --- were more than 40 years old and prayed that they might be included in her patta. An enquiry was then held during which the adjoining pattadars stated that the encroachments had been standing in the same place from 30-40 years. The Tahsildar then reported to the Divisional Officer that --- these statements of respectable persons showed that the encroachments were old ones, that the road at this place was sufficiently wide and that the plots might therefore be assigned at the ground rent of Rs 100 per annum subject

to the payment of site value at Rs.2500/- per acre. The Divisional Officer also made a local inspection and finding the encroachments unobjectionable supported the Tahsildar's recommendation for assignment of the plots. As the Chairman of the Municipality differed from this view, I inspected the place in company with the Chairman and came to the conclusion that the encroachments were objectionable and accordingly directed their removal.

3. The Plaintiff then sent me a suit notice alleging that the encroachment plots were part of wargland left out of patta by mistake. On receipt of this notice, I ordered an enquiry into the Plaintiff's wargclaim. Her guardian failed to produce the documents in support of the warg claim, though he was given the time asked for by him. I therefore recorded the suit notice. Hence the suit.

4. The Government Pleader, Bangalore, whom I have consulted plot. states that the statements of the witnesses only go to prove that the plots have only been in Plaintiff's enjoyment for the last 30 or 40 years which is insufficient to affect the rights of Government. He is of opinion that the Government has a good case and that the suit may well be contested. Copy of his letter is enclosed. I agree with him and request that the Board may be pleased to sanction the defence of the suit.

5. I propose to file the following documents on behalf of Government as ~~ordered~~ advised by the Government Pleader.

(i) Extract from the Settlement Register showing the demarcation of the plaint plots as Road poramboke.

(ii) Plaintiff's petition objecting to the Rough patta served on her guardian. This petition refers only to the classification and assessment of the plots included in patta and not to the demarcation of the plaint plots as poramboke.

(iii) G.O.No.1377, dated 10-5-11, declaring the survey of the Bangalore Municipality to be final.

(iv) Extract from the register showing the service of rough patta on the plaintiff in respect of S.No.392 of Kodi-albail village and adjoining encroachments.

6. I enclose for the Board's approval the draft written statement prepared by the Government pleader, Mangalore. A copy of the plaint is also enclosed together with the statement prescribed in B.J.O.No.93.

For Collector. 2.5.124

24.12.21

24 DEC. 1921

Suit (S Kanara) Mangalore Dt. Munsiff's ws no 480/21 - Kodialbail-
Encroachment Road Perambokey Defence Sanctioned
R. No.

The Board sanctions the defence of the Suit and approves the draft w.s. subject to the following modifications: (1) In para 4 Substitute in para III (4) (ii) in para 8 for Thus Substitute here

5.1.22 To The Collr. S. Kanara

5.1.22 The Case for Govt rests upon (i) Plff's failure to object at the time of Settt (2) or within 6 years thereafter and (ii) finality of the Town Survey.

X Art 120, Page 500, Vol VI of Acts-

On the other hand Plff's possession for 40 years is admitted It is possible that the Courts might infer from thes length of possession that the Plff had possessen also prior to 40 yrs & Shift the onus on to Govt

(A)

5.1.22 The Collr's report is silent on the question of the ways (B) Claim as also as to whether the Town Survey can be taken as final in this case. Nothing is said as to whether the party was given notice under Sec. 11 (3) of the Survey Act IV of 1923 X & whether there was a dispute followed by a decision thereon. No sketch of the disputed land has been furnished either. Question is whether

X/- X Vol II

is worthwhile defending the suit seeing that the encroachments have remained unobjected to for the last 40 yrs. The Talk. is there to have reported that the road is much narrowed by the encroachments & the Dt. Bd. has agreed with him. The Md. Chairman's is on the removal of the encroachments & the Coll. supports him but not that Hatrung reaches.

Jr adv. Asst (L) above, & recently, a Dist Judge held that the Proc Council's ruling 1.L.J.
S.C. 1.22 — does not apply to village sites and. 39.
we are consulting G.P. Madras as to advisability of appealing & selling this point of law. refd.

Asst (L). Unless a claim had been made before Survey 9.L.J.
officer and notice had been disallowed — it would be no 41.L.J.
res judicata. Here no information —

Honble, the M.C. has, because of the adverse possession for 30 years, lost the right to use the site as road, even if it ever formed part of it. It is now a question for Govt. whether they will insist on their right. Which still is not barred — Coll. says encroachment is objectionable but it has stood there for these 30 years. Is it worth while removing it now.

— In view of the above Coll. may be
Adm asked if it is not better to compromise by
7.1.22 selling the site to it. — He may obtain addl

The encroachment has been in existence
for [illegible] years. [illegible] thinks
work [illegible] the case.
The Coll. may be asked to
Compromise

10.1.

is worthwhile depending the suit seeing that the encroachments have remained unobjected for the last 40 yrs. The Talk. is chain to have reported that the road is much narrowed by the encroachments & the Dt. Off. has agreed with him. The Md. Chairman wishes on the removal of the encroachments & the Coll. supports him but unfortunately Hatung reasons.

Ja 10.1.22

Asst (H) above, a recently, a Dist Judge held that the Proc Council's ruling I.L.R. 39. M. 617 rep. in (Q) s. 1.22 — does not apply to village site land.

we are consulting G.P. Madras as to advisability of appealing - & selling this point of law.

Asst (B). Unless a claim had been made before Survey Officer and rejected — it would be no res judicata. Has Coll no information -

However, the M.C. has, because of plts. adverse possession for 30 years - lost his right. House his site as road, even if it ever formed part of it. It is now a question for Govt. whether they will insist on their right. Coll still is not barred - Coll's encroachment is objectionable but it has stood there for these 30 years. Is it worth while removing it now.

— In view of the above Coll may be asked if it is not better to compromise by selling the site to plt. - He may obtain adl

Ja 7.1.22

The encroachment has been in existence for 30 or 40 years & it seems doubtful whether Govt. after allowing the case to remain so long will succeed in getting the encroachment removed. The Coll. may be asked to compromise

10.1.22

In the Court of the Principal District Munsiff of Mangalore.

O S. No.480/1921.
I.A.719/21.

Between

1. Miss Mary Matilda Coelho, lunatic by her guardian Mr.J.J.Fernandes -- Bar-at-law appointed by the District Court of South Kanara. } Plaintiff.

and.

The Secretary of State for India in Council. } Defendant.

Plaint under sec.26 and OVIII Rules 1 to 7 of C.P.C of 1908.

The plaintiff begs to state as follows:-

1. The plaintiff is a lunatic represented by Mr. J.J. Fernandes Bar-at-law guardian appointed by the District Court of South Kanara residing at Lalbagh, Codialbail, Mangalore --- Town. Address for service of all notices and processes is as above.

11. The defendant is represented by the Collector of South Kanara residing in Mangalore.

III. That the plots marked A B C in the accompanying plan forming one big plot in Kasaba Bazaar village of Mangalore Mangalore belong to the plaintiff in her own absolute right -- and have been in the enjoyment and possession of the plaintiff and her predecessors-in-title for the last more than 100 years

2. That the present house D in the accompanying plan standing on the plot B as well as on plot A has been in existence since the last more than 40 years in the same condition as it stands now existing up to the drain steined by the Municipality now more than 40 years ago. Even previously there had been another house at the same site.

3. The defendant has absolutely no right over the said plots B and C fully described herein below and they have never been in the enjoyment and possession of the defendant.

4. That owing to some mistake in the survey line

owing to the bend in the plot these plots the plaintiff now finds do not seem to have been included in the patta of the plaintiff in the recent Settlement operations. But these plots have continued to be in the enjoyment and possession of the plaintiff even afetr the said Settlement.

5. The defendant wants to take undue advantage of the said mistake of his servants and has served a notice upon the plaintiff alleging that the plots have been encroached upon by the plaintiff and has unlawfully instituted proceedings under the Land Encroachment Act against the plaintiff for removal of the alleged encroachment.

6. The plaintiff submits that there is no encroachment at all and the said plots belong to the plaintiff absolutely and have been in the enjoyment and possession of the plaintiff and her predecessor-in-title for the last more than 100 years and that the defendant has no right to the said plots which were never in his enjoyment and possession and the action on behalf of the 1st defendant is illegal and invalid and ultra vires and is not valid and binding against the plaintiff.

7. The plaintiff requested the authorities on behalf of the defendant to set matters right but they are not willing to do -- justice and withdraw the said proceedings and did not heed to the request of the plaintiff and hence plaintiff is constrained to bring this suit for the necessary reliefs and the plaintiff has dul sent a registered notice dated 27th June 1921 to the defendant as required by section 80 of the Civil Procedure Code of 1908.

8. The cause of action for this suit arose in Mangalorein or about May 1921 within the jurisdiction of this court.

IV. The plaintiff values the relief sought ~~for~~ at Rs.20-0-0

V. The plaintiff prays for a decree against the defendant for the following reliefs.

1) Declaring that the plots B and C belong to the Plaintiff in her own right and that the encroachment proceedings instituted by the defendant is ultra vires and illegal and is not valid and binding against the plaintiff and issuing a permanent injunction inst the def ndantrestraining the defendant or his men from

interfering in any way with the possession and enjoyment of the plaint plots by the plaintiff :- This relief is valued at Rs. 20-0-0-

2. Directing defendant to pay plaintiff costs of this suit with interest thereon at 6 per.cent.

3. Granting plaintiff such other further reliefs as in the circumstnces of this case the court may deem fit to grant.

Total Rs. 20-0-0

Here enter the description of the plaint plots.

(True copy)

Sd. ----
Vakil for plaintiff

For Collector.

In the Court of the District Munsiff of Mangalore.

O.S.No.480/1921.

Between:-

Miss Mary Matilda Coelho, Lunatic by her guardian Mr.J.T.Fernandes, Bar-at-law, -- appointed by theDistrict Court of South Kanara. } Plaintiff

And

The Secretary of State for India in Council. Defendant.

Written statement of the defendant under O VIII -- Rule 1 of the Code of Civil Procedure 1908.

1. Plaintiff's suit is frivolous and unsustainable at law.

2. It is denied that the plaint plots B and C belong to plaintiff or that they have been in the enjoyment of plaintiff or her predecessor-in-title as such for the last 100 years or more as alleged.

3. The suit plots belong to Government and having been clearly encroached upon by Plaintiff, proceedings --- were rightly taken against her under the Land Encroachment Act.

4. It is not true as alleged in para 4 of the plaint that there has been any survey mistake regarding the plaint plots and that in consequence of the same they were not -- included in the plaintiff's patta.

5. It is denied that the house D has been in existence for more than 40 years past. The portion of the said house standing on the plot B is a clear encroachment.

6. Plaintiff not having objected to the exclusion of the plaint plots from her rough patta at the time of the survey and settlement operations, and the survey so -- far as this Municipality is concerned, having long been -- declared by Government to be final, Plaintiff is estopped from now questioning the correctness of the same by means

of the present suit.

7. In any event, plaintiff's claim to the plaint plots is clearly time-barred.

8. Plaintiff is not entitled to the declaration sought by him.

It is accordingly prayed that the plaintiff's suit may be dismissed with costs.

Dated 22.12.21

For Collector.

22.12.21

Form A.—Defence of Suits

IX 1—1-12

Date of the plaint.	Date of service of the summons on the Collector.	Date of Collector's letter.	Date of hearing.	Explanation for delay where a clear fortnight is not allowed to the Board for the consideration of the case.
1	2	3	4	5
20-10-21.	14-11-21	22-12-21	20-1-22.	

COLLECTOR'S OFFICE, Mangalore
Camp, Charmadi,
Dated 22nd Decr 1921.

For. *Collector.* 25/12

Copy of letter No. 407 dated 17th December 1921 from A.J.Lobo Esquire, B.A.B.L., Government Pleader, Mangalore-to the Collector of South Kanara.

O.S.No. 480/21 on the file of the Principal District-Munsif's Court, Mangalore.

In forwarding herewith the draft written statement to be filed on behalf of Government in the above suit, I am of-opinion that plaintiff has not succeeded in making out any-good title to either of the two plaint plots. She has not-produced any documents in support of her title or possession of the same. The statements of the witnesses examined on -- her behalf during the Revenue enquiry at best would only go-- to prove that the plots have been in plaintiff's enjoyment -- for the last 30 or 40 years. Possession for this period,-- even if true would not be sufficient to affect the rights-of the Government. As law stands, the onus lies on plaintiff to establish affirmatively that she has been in adverse --- possession for the full statutory period of 60 years.

Plaintiff and her witnesses allege that the house has been standing on the plaint plot B for the last 40 years or-more. No enquiry appears to have been directed so far by -- the ahsildar, as to when this house was actually constructed Evidence is required, to prove that the house D or the portion of it projecting over B is a recent construction of not more than 20 or 30 years.

Plaintiff not having objected at any time before this to the survey demarcation of the plots as Government land, it is too late for her now to question about it. Her present-claim if any to the plaint plots must be held to be clearly-time barred. Any suit for declaration should have been --- brought within 6 years from the date of the service of the--- rought patta on plaintiff or her predecessors. I remember-a G.O. was received some time back declaring the survey --- final in this Municipality. The said G.O. will have to be-filed in the suit as also true extracts from the survey and-settlement Registers showing the demarcation of the plaint-plots as Road Poramboke. Evidence will have to be let also to prove that the rough patta was actually served on Plaintiff or her predecessors regarding the exclusion of the plaint-plots and demarcating the same as Poramboke.

On the evidence on record I am of opinion that the-Government has a good case, and that the suit may well be-contested. The records sent to me are herewith returned.

/Ture Copy/

D'Mambram. 28/12

For Collector.

28/12/21

A 11/21 — 4

Suits (S. kanara) Mangalore Principal Dt. Munsiff. OS. no 480/21 — Kodialbail — Encroachment — Road pramboke — Compromise directed

Res Mis 39/11.1.22

As the encroachments have been admittedly in existence for the past thirty or forty years the Municipality must be deemed to have lost such rights as they had. The Coll is accordingly requested to compromise the suit on the best terms obtainable

free
11.1.22

11.1.22 11.1.22

To The Collr S. kanara.

Note

vide order at back of p 3 ct.

AM
11/1/22

11.1.22